



California Regulatory Notice Register

REGISTER 2011, NO. 5-Z

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FEBRUARY 4, 2011

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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CALIFORNIA REGULATORY NOTICE REGISTER 2011, VOLUME NO. 5-Z**REFERENCE**

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 87103.

CONTACT

Any inquiries should be made to Brian G. Lau, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>.

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document. This proposed regulatory action clarifies and makes specific requirements for publicly available pay schedule and labor policy or agreement. As used in this regulation, labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 21, 2011. The Regulations Coordinator must receive all written

comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; e-mail at: Veronica_Mora@calpers.ca.gov; or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-0713

III. PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to adopt proposed sections 570.5 and 571 under Government Code section 20636 and 20636.1.

This action would be declaratory of the existing law, and serve an informative function for workers and employers who are unfamiliar with these existing laws.

Authority cited for section 570.5 is sections 20120 and 20121 of the Government Code. Reference is sections 20630, 20636 and 20636.1 of the Government Code.

Authority cited for section 571 is sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121 of the Government Code. Reference is sections 20630, 20636, 20636.1 and 20691 of the Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensa-

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tion be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's Internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employees working in positions qualified for membership in CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action imposes a mandate on local agencies or

school districts, related to the publication of pay schedules.

- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action does not impact any federal funding to the state.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CALIFORNIA REGULATORY NOTICE REGISTER 2011, VOLUME NO. 5-Z**X. CONTACT PERSONS**

Please direct inquiries concerning the substance of the proposed regulatory action to:

Tomi Jimenez
Employer Services Division
California Public Employees' Retirement System
P.O. Box 942709
Telephone: (916) 795-0340
E-mail: tomi_jimenez@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, CalPERS Regulations Coordinator, at the address shown above, or (916) 795-0713 (veronica_mora@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at

the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII.

One can access the regulatory material regarding this action at CalPERS' website at www.calpers.ca.gov under About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**Notice of Proposed Rulemaking****45 — Day Notice**

The Department of Food and Agriculture amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as an emergency action which was effective on December 30, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than June 28, 2011.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on March 21, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

PROPOSED CHANGES TO MEMBER CONTRIBUTIONS REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 5. Member Contributions

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of compensation earnable, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly monthly, bi-monthly, or annually;
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

- (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
- (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
- (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

Note: Authority cited: Sections 20120 and 20121, Government Code.
Reference: Sections 20630, 20636, 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049 that:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

AUTHORITY:

Note: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

INITIAL STATEMENT OF REASONS

Adoption of new section 570.5 and revised 571(b) - Clarification and identification of specific requirements for publicly available pay schedule and labor policy or agreement.

Description of Public Problem, Administrative Requirement, or Other condition or Circumstance that the Regulation is Intended to Address:

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, as defined, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

Specific Purpose: The proposed regulations will clarify existing law and ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation.

Necessity: These regulations will help CalPERS enforce compliance with the compensation statutes, maintain a consistent practice of verifying payrates and special compensation for compensation reported by CalPERS employers, and encourage transparency and proper reporting of public employees' pay for retirement purposes.

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome. The alternative of adopting no regulation would be less effective and would not lead to the anticipated benefits expected from the proposed action.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses because it applies only to public agency employee retirement benefits.